Supreme Court, U.S.
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No. 95-1334

In The

Supreme Court of the United States

October Term, 1995

BOBBIE JUNE GRIGGS,

Petitioner,

vs.

SOUTH CAROLINA ELECTRIC & GAS COMPANY,

Respondent.

PETER HARVEY GRIGGS,

Petitioner,

vs.

SOUTH CAROLINA ELECTRIC & GAS COMPANY,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of South Carolina

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Was the South Carolina Supreme Court correct in affirming the lower court's granting of Respondent's motion to dismiss for lack of subject matter jurisdiction?

RULE 29(6) LISTING OF PARENT OR SUBSIDIARY COMPANIES

SCANA Corporation is the parent company of the Respondent. Respondent has no nonwholly owned subsidiaries.

STATEMENT OF THE CASE

Petitioner, Bobby June Griggs, filed her complaint in the South Carolina Circuit Court setting out causes of action for conversion, outrage, negligence, quasi contract and fraud (*see* Petitioners' Brief for Bobby June Griggs' Complaint). Her husband, Peter Harvey Griggs, filed his derivative action for loss of consortium. All of the actions arose from the alleged unauthorized publication of a recipe (*see* Petitioners' Brief) that Petitioner, Bobby June Griggs, had submitted in the Third Annual South Carolina Rice Cook Off. Respondent was a sponsor of the Cook Off. Respondent filed a motion to dismiss the complaints for lack of subject matter jurisdiction (*see* Petitioners' Brief). The motion was granted and the Petitioners appealed to the South Carolina Supreme Court. The South Carolina Supreme Court affirmed the lower court.

REASONS FOR DENYING THE WRIT

1. This Court need look no further than the preamble to Petitioners' Questions Presented to determine that the one inescapable element of this case is the allegedly unauthorized publication of Petitioner, Bobby June Griggs', recipe. If the recipe had not been published none of the rest of the events that Petitioners seek to forge into causes of action would have occurred.

Was there a duty not to publish Petitioner's recipe without her authorization? What was the source of any such duty? Where does an action lie for the breach of such a duty? This is what these cases are about. The answers are found in the law of copyright. The federal courts have exclusive jurisdiction to hear and determine copyright issues. 17 U.S.C. § 106.

Whether or not a single recipe can be copyrighted is really

not the threshold question as Petitioners suggest in the second question presented. If it were, that too would be a copyright issue that would fall within the exclusive jurisdiction of the federal courts. The question is does copyright law have to be considered or interpreted to determine the issues raised in this case. The answer is clearly yes. This places these cases squarely within the holding in *T.B. Harms Co. v. Eliscu,* 339 F.2d 823 (2nd Cir. 1964), *cert. denied,* 381 U.S. 915, 85 S. Ct. 1534, 14 L. Ed. 2d 435 (1965), where the standards for actions that "arise under" the copyright law under 28 U.S.C. § 1338(a) were established:

> An action "arises under" the Copyright Act if and only if the complaint is for a remedy expressly granted by the Act, e.g., a suit for infringement . . . , or asserts a claim requiring construction of the Act . . . , or at the very least and perhaps more doubtfully, presents a case where a distinctive policy of the Act requires that federal principles control the disposition of the claim.

Petitioners would have this Court effectively rule that a question as to whether or not a single recipe can be copyrighted or not should be decided by a state court. . .

2. If this case had been brought in the federal district court the district court could have decided the outrage cause of action under South Carolina law just as the Maryland District Court in the *Wharton* case, cited in Petitioners' brief, decided the intentional infliction of emotional distress claim, under Maryland law.

Whether the outrage cause of action is preempted by the copyright law is not the question. What is undeniable is that the publication had to be wrong if Petitioners are to recover.

Whether or not the publication of the recipe was in violation of the copyright law, is a federal question, that must be decided in the federal court, as the South Carolina Supreme Court and the South Carolina Circuit Court correctly ruled.

CONCLUSION

For these reasons the petition for a writ of certiorari should be denied.

Respectfully submitted,

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